

February 21, 2022

The Honorable James Maroney
The Honorable Mike D'Agostino
Joint Committee on General Law
300 Capitol Avenue Room 3500
Hartford, CT

Re: SB 121 – Boat Manufacturers Opposition to Fair Right to Repair

Dear Chairman Maroney, Chairman D'Agostino and Members of the Committee:

On behalf of the National Marine Manufacturers Association (NMMA), I am writing to request that members of the committee vote to oppose SB 121, Fair Right to Repair.

While there are several aspects of SB 121 that are troubling, I will focus on three significant concerns: 1) how this bill would require manufacturers to violate federal Clean Air Act law; 2) how this bill mandates access for the general public to closely-held intellectual property; 3) how this bill unnecessarily creates safety concerns and mandates pricing.

By way of introduction, NMMA is the premier trade association representing manufacturers of recreational marine engines, boats and accessories in North America. NMMA member companies produce more than 80 percent of the boats, engines and accessories used by boaters and anglers in North America. Recreational boating has an estimated direct and indirect annual economic impact of \$170.3 billion. Boating in Connecticut had an annual economic impact of \$4.1 billion in 2019, providing 20,600 jobs and is the lifeblood of 646 businesses.

Boat engine manufacturers provide significant access to boaters attempting to do their own repairs and maintenance. Boat owners can walk into any local dealership and purchase the parts they need, from the smallest fuel injector entire lower units. They can buy the diagnostic tools and software needed to identify error codes and the repair manuals needed to decipher them. Trained repairmen not affiliated with the dealership can likewise purchase the parts, software, tools and documentation needed.

Clean Air Act: *However, the extent of that access is strictly limited by the U.S. EPA and the Clean Air Act.* To comply with Clean Air Act and meet EPA mandates, recreational marine engine manufacturers and other manufacturers making engines regulated by the act cannot provide unrestricted access to pollution control devices. In guidance issued on Nov. 23, 2020 by Susan Parker Bodine, EPA Assistant Administrator for Enforcement and Compliance Assurance [attached], tampering with emission controls is a federal offense. Manufacturers are the gatekeepers. They must ensure that access to the an engine's emission controls is only made available to those who can be expected to adhere with

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Clean Air Act mandates and to keep emission tolerances within federally required levels. Original Equipment Manufacturers (OEMs) must limit access to these highly regulated sections of software to factory-trained and certified technicians, and even then some access points are only available to representatives of the manufacturer. As Ms. Bodine states in the official guidance:

“Section 203(a)(3) of the [Clean Air] Act prohibits tampering with emissions controls, and also prohibits making and selling products with a principal effect of bypassing, defeating, or rendering inoperative emissions controls. The prohibitions in section 203(a)(3) apply to all vehicles, engines, and equipment subject to the certification requirements under section 206 of the Act, or other design requirements in the Act or regulations. This includes... nonroad vehicles (e.g., all-terrain vehicles, off-road motorcycles) and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or “tailpipe” emissions, evaporative emissions, and onboard diagnostic systems.”

SB 121 was written with the intent of going beyond giving the public or independent repair shops the ability to repair their marine engines. *It gives them the ability to tamper with emission controls and violate federal emission standards.* It requires manufacturers to give the general public access to these “locked” sections of software and emission controls – and the codes needed to reset the locks that have been breached. Boat engine manufacturers simply cannot, under federal law, facilitate access to these protected areas.

Intellectual property: In addition, SB 121 requires manufacturers to provide access to intellectual property if that access is required to use make certain repairs. Because of the federal mandate to restrict access, intellectual property can be accessed by those given access to pollution control systems. It would be a significant over-reach to not only require manufacturers violate the Clean Air Act, but to also give general access to the “locks” developed to protect our intellectual property.

Pricing: This bill would require manufacturers to sell to the public repair parts at wholesale prices and discounted shipping, a mandate not required of the automobile industry, or frankly any consumer product. We simply don’t understand why the legislation would require a business to sell parts, tools and manuals at wholesale prices to the public.

Current Access: The marine industry provides parts, repair manuals and tools to the general public through its dealerships, meaning parts are available within a short drive of most any Connecticut city. If a repair facility completes service training, even if it is not a dealership, it is able to order parts, diagnostic systems and tools directly from the manufacturer. The limits placed on software access affect only a very small percentage of repairs.

For those reasons and more, we ask the committee to vote against this bill. If you have questions, please contact me at ddickerson@nmma.org or (301) 793-2001.

Sincerely,



David Dickerson
Vice President, State Government Relations